

## THE SOURCES OF LAW

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### Abstract

When it comes to the sources of law, “primary sources” and “secondary sources” come to mind.

Primary sources states how and under which conditions legal rules occur and where they come from. Secondary sources are the sources that present in what ways legal rules are seen and these are called “formal sources of law”.

Formal sources of law are divided into “written sources” and “unwritten sources”.

“Subsidiary sources” can be added to them. Written sources: it consists of delegated legislations, regulations and guidelines. Unwritten sources constitute customs law. Subsidiary sources are made up case law (judicial) and jurisprudence (doctrine)

**Keywords:** Law, Sources,

### INTRODUCTION

The sources of law can be studied under 2 major window

1. Written Sources (Primary Sources) (Written Law= Statue Law) a. Laws

b. Delegated Legislation

c. Regulations

d. Guidelines (Bylaw)

1. Unwritten Sources (Secondary Sources) Customary Law a. Particular Customs Law

(For example, *Paftos* and *Örfü Belde* (The *Gedik* Right), commercial customs)

b. General Customs Law (For example share cropping, usufructuary)

Subsidiary Sources

a. Case Law

b. Jurisprudence

### 1. WRITTEN SOURCES

A. LAWS: General, perdurable and abstract legal rules are called law. Law is enacted by the body which is authorized by constitution.

The body that enacts laws is called legislature.

**DRAFT OF LAW (BILL):** It is the law project that is presented by cabinet (government) to assembly.

**BILL OF LAW:** It is the law project that is presented by congressmen to assembly.

Laws which are passed by the TGNA (Turkish Grand National Assembly) are promulgated by President within 15 days.

President returns back laws, which are not approved to be promulgated, to parliament for reviewing. If parliament passes again, President is obliged to publish it.

**PRESIDENT CANNOT RETURN BACK BUDGET LAWS.**

Laws are promulgated in the official gazette which is published by Prime Ministry.

On which date laws come into force is generally expressed in their texts. If law does not express the date of coming into force in its text, it comes into force within 45 days from the date on it is promulgated in the official gazette.

Being general of a law means that it covers all persons and events at the same situation.

Being perdurable of a law means that means that it is enforced for all events after coming into force.

Being written of a law means that it is written.

International agreements which are approved by TGNA are considered as law.

Laws cannot be against the law. This is called supremacy of the constitution.

Whether laws comply with the constitution or not is audited in two ways. Political review and Judicial review. Political review is made by the assembly; judicial review is made by the constitutional court.

## 1. REGULATIONS

It shows how laws are enforced. They are investigated by Council of State, made by Cabinet and signed by President, promulgated in the official gazette. Cases regarding the cancellation of regulation are heard by Council of State.

## 2. GUIDELINES (BYLAWS)

They are rules which are made to show the enforcement of laws and regulations regarding purviews of Prime Ministry, ministries and public entities. Every guideline is not published in the official gazette. Which guideline is to be published is laid down by the laws. A case for the cancellation of guideline is filed in Council of State.

3. UNWRITTEN SOURCES = SECONDARY SOURCES (CUSTOMS LAW) They are unwritten legal rules. It has three elements.

These are:

1. Material Element: It is continuity and repetition. Hence, Fashion cannot be customs law.
2. Moral Element: It is general belief on rule.
3. Legal Element: It is legal sanction.

Justice firstly enforces the law. If judgment is not in the law as secondarily, justice enforces the customs. Customs law divides into two as general customs and particular customs. General customs law: it is known and enforced across the country. It has two examples: 1. Share cropping and 2. Usufructuary. 1. Share cropping: The care of cropping animal is given to someone else and in return, the person, called sharecropper, keeps a part of cropping which are provided by animals that are given to him/her. 2. Usufructuary: The share of soil products.

Private customs law: It is enforced in a certain part of the country. For example *Paftos*: Vineyard cultivation on a land that belongs to someone else, *Örfü belde*: raising a building on a land that belongs to someone else.

SUMMARY:

#### UNITE-6 DEFINITION AND TYPES OF RIGHT

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Right: They are powers that are authorized to persons by legal order. Views that are put forward to explain the essence of right:

1. Theory of will
2. Theory of advantage
3. Theory of liberty
4. Mixed theory

#### 1. PUBLIC RIGHTS (STATUTORY RIGHTS)

- A. Personal Rights
- B. Social and Economic Rights
- C. Political Rights

#### 2. PRIVATE RIGHTS (CIVIL RIGHTS)

- A. According to their natures:
  - a. Absolute Rights
  - b. Relative Rights

B. According to their subject:

a. Estate (Asset Rights)

b. Immaterial Rights

C. According to their usage:

a. Transferable rights

b. Untransferable rights

D. According to their object:

a. Formative rights

b. Ordinary rights

**PUBLIC RIGHTS (STATUTORY RIGHTS):** They are rights, arising from the relationship between persons and state, in other words, public law.

**A. Personal Rights:** They are related to the pecuniary and non-pecuniary assets of persons. For example, personal immunity, right of privacy, freedom of religion and conscience, freedom of thought, freedom of communication, immunity of domicile, right to assembly and demonstration.

**B. Social and Economic Rights:** They are related to the social and economic activities of persons. For example, right to education, right to work, right to rest, right to strike and lockout, right to housing, right to social security.

**C. Political Rights:** They are related to participate in state government and political establishments. For example, right to elect and to be elected, right to petition, right to found political parties, citizenship right.

**Right of access,** It is the right to pass a real estate that belongs to someone else.

**Right of building,** It is the right to make a building on a real estate that belong to someone else.

**Limited real rights** do not vest power of appointment. It vests power to use or benefit.

**Charge on land,** it is a real estate owner's being force to do or give something to third person because of this asset.

**Right of mortgage,** if creditor cannot collect his/her receivable, it vests power to receive his/her receivable by selling debtor's asset and turning it into cash. Right of mortgage is divided into two:

1. **Chattel Mortgage,** It is put on chattels.

2. **Pledge on land,** It has three types as hypothecate, mortgage certificate and annuity bond.

Rights on intangible goods:

Absolute rights which are vested to the owners of intangible goods are called intellectual property. Story, novel, poem.

Patent right is the right to benefit from this right by the owner of patent or his/her inheritors for a while.

There are brands among the intangible goods. For example, Grundig, Turyağ, Piyale etc.

Absolute rights on persons:

There are divided into two:

1. Absolute rights on his/her own: This is called personal rights.

2. Absolute rights on someone else. For example, parental right, guardianship right.

b. Relative rights, They are rights which are asserted to certain people not to everyone. Relative rights arise from the debt relationship. These are the rights that can be asserted between creditor and debtor. Debt relationship is the relationship that is between two people and one is liable to give, do or not to do something to the other.

Debt arises from three sources:

1. Legal transaction (Legal proceedings)

2. Torts

3. Unjust enrichment.

**SUMMARY:**

Rights are powers which are vested by legal order to persons. As every right depends on a legal rule, every right has definitely an owner; there would not be a right without an owner. Rights are divided into two as “public rights” and “private rights” according to legal rules from which they arise. Public rights are the rights which arise from public law. Public rights are divided into three as “personal rights”, “social and economic rights”, and “political rights”.

Private rights are the rights which arise from private law, and they are divided into various types according to their natures, subjects, uses and finally their objects. The most important division among them is the division of “absolute rights” and “relative rights”.

Although absolute rights can be asserted against everyone, relative rights can be asserted against only a certain person or persons.